



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2004

Mr. Lance Beversdorff
Staff Attorney
Texas Youth Commission
P. O. Box 4260
Austin, Texas 78765

OR2004-9338

Dear Mr. Beversdorff:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 212037.

The Texas Youth Commission (the "commission") received a request for 1) a specified list and associated information; 2) information sent to and from the commission regarding a specified arrest of an individual and other arrests of this same individual; 3) certain commission policies; 4) information pertaining to a specified commission investigation; 5) information pertaining to the death of a certain inmate; 6) information pertaining to an incident between an inmate and a specified "JCO Supervisor"; 7) information pertaining to an assault of a certain caseworker; and 8) letters sent to the commission regarding the hiring of a specified person. The requestor also asks the commission several questions in his request.¹ You state that the commission is providing the requestor with some of the requested information. You indicate that the remaining requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101, 552.102, 552.117,

¹ We note that the Public Information Act (the "Act") does not require a governmental body to prepare answers to questions posed by a requestor. *See* Open Records Decision No. 555 at 1-2 (1990) (considering request for answers to fact questions). However, a governmental body must make a good-faith effort to relate a request to information that the governmental body holds or to which it has access. *See* Open Records Decision No. 561 at 8 (1990). We, therefore, presume that the commission has made the required good-faith effort to relate the requestor's questions to information that is within the commission's custody or control.

and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information, which includes representative sample documents.²

You indicate that portions of the submitted information constitute medical record information, access to which is governed by the Medical Practice Act ("MPA"), chapter 159 of the Occupations Code. Section 159.002 provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Further, information that is subject to the MPA also includes information that was obtained from medical records. *See id.* § 159.002(a), (b), (c); *see also* Open Records Decision No. 598 (1991). Medical records must be released upon the governmental body's receipt of the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. *See* Open Records Decision No. 565 at 7 (1990). Based on our review of the submitted information, we have marked the information that it subject to the MPA. Absent the applicability of an MPA access provision, the commission must withhold this particular marked information pursuant to the MPA.

You also indicate that portions of the remaining submitted information constitute mental health record information that is subject to chapter 611 of the Health and Safety Code. Chapter 611 provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) provides:

² We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Health & Safety Code § 611.002. Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See* Health and Safety Code § 611.001. Sections 611.004 and 611.0045 provide for access to mental health records only for certain individuals. *See* Open Records Decision No. 565 (1990). After carefully reviewing the remaining submitted information, we find that no portion of this information is subject to chapter 611 of the Health and Safety Code. Accordingly, we conclude that the commission may not withhold any portion of the remaining submitted information under chapter 611 of the Health and Safety Code.

We note that portions of the remaining submitted information that we have marked are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 2654 of title 29 of the United States Code, also known as the Family and Medical Leave Act (the “FMLA”).³ Section 825.500 of chapter V of title 29 of the Code of Federal Regulations identifies the record-keeping requirements for employers that are subject to the FMLA. Subsection (g) of section 825.500 states that

[r]ecords and documents relating to medical certifications, recertifications or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files, and if ADA is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements . . . , except that:

- (1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;
- (2) First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and

³ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

(3) Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

29 C.F.R. § 825.500(g). We note that these particular marked portions of the remaining submitted information appear to consist of FMLA paperwork contained in the file of one of the commission employees who is the subject of this request and collected and maintained by the commission pursuant to the FMLA. This information relates to medical certifications that were created for purposes of the FMLA. We find that none of the release provisions of the FMLA apply in this instance. Accordingly, we conclude that the commission must withhold this particular marked information pursuant to section 552.101 of the Government Code in conjunction with section 2654 of title 29 of the United States Code.

In addition, you indicate that portions of the remaining submitted information consist of I-9 and W-4 forms that are excepted from disclosure pursuant to section 552.101 in conjunction with federal law. We note that section 1324a of title 8 of the United States Code provides that an Employment Eligibility Verification Form I-9 “may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). We also note that a W-4 form is confidential under section 6103(a) of title 26 of the United States Code. After carefully reviewing the remaining submitted information, we find that no portion of this information consists of I-9 or W-4 forms that are confidential under federal law. Accordingly, we conclude that the commission may not withhold any portion of the remaining submitted information under section 552.101 of the Government Code in conjunction with these federal provisions.

Further, you indicate that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.101 in conjunction with the Americans with Disabilities Act (the “ADA”), 42 U.S.C. §§ 12101 *et seq.* Title I of the ADA provides that information about the medical conditions and medical histories of applicants or employees must be (1) collected and maintained on separate forms, (2) kept in separate medical files, and (3) treated as a confidential medical record. Information obtained in the course of a “fitness for duty examination,” conducted to determine whether an employee is still able to perform the essential functions of his or her job, is to be treated as a confidential medical record as well. *See* 29 C.F.R. § 1630.14(c); *see also* Open Records Decision No. 641 (1996). In addition, the federal Equal Employment Opportunity Commission (the “EEOC”) has determined that medical information for the purposes of the ADA includes “specific information about an individual’s disability and related functional limitations, as well as general statements that an individual has a disability or that an ADA reasonable accommodation has been provided for a particular individual.” *See* Letter from Ellen J. Vargyas, Legal Counsel, EEOC, to Barry Kearney, Associate General Counsel, National Labor Relations Board, 3 (Oct. 1, 1997). After carefully reviewing the remaining submitted

information, we find that no portion of this information is encompassed by the ADA and, thus, may not be withheld under section 552.101 of the Government Code on that basis.

You also indicate that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.101 in conjunction with section 21.355 of the Education Code. Section 21.355 provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined that the word “teacher” for purposes of section 21.355 means a person who (1) is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. We also determined the word “administrator” for purposes of section 21.355 means a person who (1) is required to and does in fact hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code and (2) is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *See id.* After carefully reviewing the remaining submitted information, we find that no portion of this information is confidential under section 21.355 of the Education Code. Accordingly, we conclude that the commission may not withhold any portion of the remaining submitted information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Additionally, you indicate that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201 provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We note that the commission is authorized to conduct an investigation under chapter 261. *See* Fam. Code § 261.401(b) (state agency that operates, licenses, certifies, or registers facility in which children are located shall make prompt, thorough investigation of report that child has been or may be abused, neglected, or exploited in facility). We further note that the alleged victims associated with this particular information were all under the age of eighteen at the time of the incidents in question and, thus, were children for purposes of chapter 261. *See id.* § 101.003(a) (defining “child” for purposes of section 261.201 as “person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes”). Based on our review of the remaining submitted information, we find that the portions of this information that we have marked constitute files, reports, records, communications, and working papers used or developed in an investigation made under chapter 261 of the Family Code. The commission has adopted rules concerning investigations of alleged abuse, neglect, or exploitation. *See id.* § 261.409 (commission by rule shall adopt standards for investigation under section 261.401 of Family Code); *see also* 37 T.A.C. § 93.33. However, you do not indicate, and we are not otherwise aware, that the requestor in this instance has a right of access to this particular information under the commission’s rules. Accordingly, we conclude that the commission must withhold this particular marked information pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

You also indicate that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.101 in conjunction with section 61.073 of the Human Resources Code. Section 61.073 provides:

The commission shall keep written records of all examinations and conclusions based on them and of all orders concerning the disposition or treatment of each child subject to its control. Except as provided by Section 61.093(c), these records and all other information concerning a child, including personally identifiable information, are not public and are available only according to the provisions of Section 58.005, Family Code, Section 61.0731, Human Resources Code, and Chapter 61, Code of Criminal Procedure.

Hum. Res. Code § 61.073.⁴ You indicate that the portions of the remaining submitted information that we have marked consist of records relating to children in the custody of the commission.⁵ Based on our review of this particular marked information, we find that section 61.073 is applicable to the information. Accordingly, we conclude that the commission must withhold this particular marked information pursuant to section 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code.

In addition, we note that criminal history record information ("CHRI") is confidential and not subject to disclosure. CHRI "means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions" but does not include "driving record information maintained by [the Department of Public Safety ("DPS")] under Subchapter C, Chapter 521, Transportation Code." Gov't Code § 411.082(2). Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."); *see also* Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12. Section 411.084 provides that CHRI obtained from the DPS pursuant to statute is confidential and may only be disclosed in very limited instances. *See* Gov't Code § 411.084; *see also* Gov't Code § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Furthermore, when a law enforcement agency compiles information that depicts an individual as a criminal suspect, arrestee, or defendant, the compilation of information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state

⁴ We note that section 61.093(c) of the Human Resources Code authorizes the disclosure of information relating to a child who has escaped from custody. We also note that section 61.0731 of the Human Resources Code authorizes the disclosure of information concerning a child to the child and the child's parent or guardian, if disclosure would not materially harm the treatment and rehabilitation of the child and would not substantially decrease the likelihood of the commission receiving information from the same or similar sources in the future. Further, we note that section 58.005(a) of the Family Code provides that information obtained for the purpose of diagnosis, examination, evaluation, or treatment of a child by an agency providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may be disclosed only to certain specified persons or under certain specified circumstances. In addition, we note that chapter 61 of the Code of Criminal Procedure governs information pertaining to criminal combinations and criminal street gangs. The commission does not indicate that it is authorized to release any portion of the remaining submitted information under sections 61.0731 or 61.093 of the Human Resources Code, section 58.005(a) of the Family Code, or chapter 61 of the Code of Criminal Procedure.

⁵ We note that for purposes of chapter 61 of the Human Resources Code, a "child" is a person less than 21 years old.

does not. *See U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993).

We note that under section 411.1141 of the Government Code, the commission is authorized to obtain CHRI maintained by DPS for certain specified purposes. *See* Gov't Code § 411.1141(a). However, the commission may not release CHRI except as provided by sections 411.1141(b) and (c). *See id.* § 411.1141(b), (c). Thus, to the extent that the requested records contain CHRI, the commission may only release that information in accordance with applicable state and federal law. *See* Open Records Decision No. 565 (1990). CHRI obtained from DPS or any other criminal justice agency in this state is confidential under subchapter F of chapter 411 of the Government Code and must be withheld under section 552.101 of the Government Code.

Further, you indicate that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.102 of the Government Code. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). Section 552.102(a) is generally applicable to information relating to a public official or employee. *See* Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be excepted from disclosure under section 552.102(a) is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected from disclosure by the common-law right to privacy as incorporated by section 552.101 of the Government Code. *See also Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). Accordingly, we address the commission's section 552.102 claim in conjunction with its common-law privacy claim under section 552.101 of the Government Code.

Information is protected from disclosure by the common-law right to privacy when (1) it is highly intimate and embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *See id.* The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. This office has since concluded that other types of information also are protected from disclosure by the common-law right to privacy. *See* Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to a drug overdose, acute alcohol intoxication, obstetrical/gynecological

illness, convulsions/seizures, or emotional/mental distress). Prior decisions of this office have also found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision No. 600 (1992) (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure).

You contend that the names and initials of juvenile offenders that appear in the remaining submitted information are protected from disclosure by the common-law right to privacy. Based on our review of your arguments and the remaining submitted information, we agree that this particular information is protected from disclosure by the common-law right to privacy and, thus, must be withheld from the requestor pursuant to section 552.101 of the Government Code. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007. We also have marked additional information contained within the remaining submitted information that is otherwise protected from disclosure by the common-law right to privacy and that, thus, must be withheld from the requestor pursuant to sections 552.101 and 552.102 of the Government Code. However, we also find that no other portion of the remaining submitted information is protected from disclosure by the common-law right to privacy and, thus, may not be withheld from the requestor under either section 552.101 or section 552.102 of the Government Code on that basis. *See* Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute his private affairs), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (statutory predecessor applicable when information would reveal intimate details of highly personal nature), 405 at 2 (1983) (manner in which employee performed his job cannot be said to be of minimal public interest), 400 at 5 (1983) (statutory predecessor protected information only if its release would lead to clearly unwarranted invasion of privacy).

You also indicate that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.102(b) of the Government Code. Section 552.102(b) provides that a transcript from an institution of higher education maintained in the personnel file of a professional public school employee is excepted from disclosure pursuant to section 552.102(b), except for the information in the transcript pertaining to the degree obtained or the curriculum. *See* Gov't Code § 552.102(b). Based on our your arguments and our review of the remaining submitted information, we conclude that the commission must withhold the information that we have marked pursuant to section 552.102(b) of the Government Code, except for the information contained within this information pertaining to the curriculum and degree obtained. *See* Educ. Code § 30.101 (educational programs provided to children in custody of commission considered to be educational services provided by public schools); *see also* 37 T.A.C. § 91.41 (commission schools accredited under provisions of subchapter E of chapter 30 of Education Code).

Further, you indicate that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.117 of the Government Code. We note that section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). However, information that is responsive to a request may not be withheld from disclosure under section 552.117(a)(1) if the employee did not request confidentiality for this information in accordance with section 552.024 or if the request for confidentiality under section 552.024 was not made until after the request for information was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). Accordingly, we conclude that to the extent that the current and former commission employees with whom the marked section 552.117(a)(1) information is associated elected confidentiality for this information prior to the date that the commission received this request, the commission must withhold this particular marked information pursuant to section 552.117(a)(1) of the Government Code.

Nevertheless, we note that these current and former commission employees' social security numbers, as well as the social security numbers of other individuals, contained within the remaining submitted information may be excepted from disclosure pursuant to section 552.101 in conjunction with federal law. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that were obtained or are maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). The commission has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain social security numbers. Therefore, we have no basis for concluding that these social security numbers are confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We caution the commission, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing these social security numbers, the commission should ensure that they were not obtained and are not maintained by the commission pursuant to any provision of law enacted on or after October 1, 1990.

Additionally, you indicate that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, we conclude that the commission must withhold the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code.

Finally, we note that an e-mail address that is contained within the remaining submitted information is excepted from disclosure pursuant to section 552.137 of the Government Code. Section 552.137 provides:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Section 552.137 requires a governmental body to withhold certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with the governmental body, unless the members of the public with whom the e-mail addresses are associated have affirmatively consented to their release. Section 552.137 does not apply to a government employee's work e-mail address or a business's general e-mail address or web address. E-mail addresses that are encompassed

by subsection 552.137(c) are also not excepted from disclosure under section 552.137. We have marked the e-mail address that is excepted from disclosure under section 552.137(a). Unless the commission has received affirmative consent for the release of this address, it must withhold the address pursuant to section 552.137 of the Government Code.

In summary, absent the applicability of an MPA access provision, the commission must withhold the information that we have marked pursuant to the MPA. The commission must withhold the additional information that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 2654 of title 29 of the United States Code, section 261.201 of the Family Code, section 61.073 of the Human Resources Code, and the common-law right to privacy. To the extent that the requested records contain CHRI, the commission may only release that information in accordance with applicable state and federal law. The commission must withhold the information that we have marked pursuant to section 552.102(b) of the Government Code, except for the information contained within this information pertaining to the curriculum and degree obtained. To the extent that the current and former commission employees with whom the marked section 552.117(a)(1) information is associated elected confidentiality for this information prior to the date that the commission received this request, the commission must withhold this particular marked information pursuant to section 552.117(a)(1) of the Government Code. Social security numbers contained within the submitted information may be confidential under federal law. The commission must withhold the information that we have marked pursuant to sections 552.130 and 552.137 of the Government Code. The commission must release the remaining submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/sdk

Ref: ID# 212037

Enc. Marked documents

c: Ms. Erin Koenig
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